

Remarks:

Reconsideration of the application as amended is respectfully requested. As more fully explained below, the examiner has not cited a single reference that discloses the claimed switch and microprocessor assembly; furthermore, the examiner has again focused on individual features of the claimed invention as they relate to the references individually as opposed to focusing on the claimed invention or the references as a whole. Additionally, the examiner rejected dependent claims based on combinations of references without considering other references that were cited in rejecting intervening claims; as such, the examiner failed to show how the cited references and the omitted references could be combined to form the claimed invention.

In the previous Office Action, claims 27 and 31 were rejected in light of patents issued to Albanes and Egan et al. The examiner notes that Albanes discloses all of the features of claim 27 except the microprocessor and related switch means. The examiner then provides that:

“Egan et al. discloses in Figures 1-4 a room heating unit (including) a casing (1) fixed against a wall (3) containing heaters (9) with heating elements (11). Egan et al. further teaches several heaters (9) are independently connected to a microprocessor control unit which switches the heating units (9) on a predetermined sequence so that the instantaneous power consumption is low and the units can be supplied at low voltage. Therefore it would have been obvious to one skilled in the art to apply the sophisticated switch taught by Egan et al. in the Albanes drying system as such would offer sequentially activating a select one of a plurality of heaters each time the switch means is activated.”

The device of Egan et al. does not disclose a switch means and a microcontroller, but instead a microcontroller that is the switch means. Egan teaches connecting a plurality of heater units within a building to a microcontroller that sequentially activates such heaters so that the heaters are not operating simultaneously. By rotating heater operation, power consumption at any given interval is low. The heaters each include a thermostat or a temperature sensor that disables their operation once the temperature has risen to a predetermined level. The patent in no way discloses or suggests sequentially actuating a plurality of heating elements within a unitary housing to vary the heat intensity emanating from a single body drier. The switch apparatus is merely concerned with conserving energy in building heating units and not with varying the heat output of a single body drier.

Not only is the claimed combination not disclosed or suggested in the prior art, the device in Egan is a non-analogous art because the patent deals with heating buildings and conserving energy, not varying the heat output of a body drier. For example, in *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992), the applicant claimed an improvement in a hose clamp which differed from the prior art in the presence of a preassembly "hook" which maintained the preassembly condition of the clamp and disengaged automatically when the clamp was tightened. The Board relied upon a reference which disclosed a hook and eye fastener for use in garments, reasoning that all hooking problems are analogous. The court held the reference was not within the field of applicant's endeavor, and was not reasonably pertinent to the particular problem with which the inventor was concerned because it had not been shown that a person of ordinary skill, seeking to solve a problem of fastening a hose clamp, would reasonably be expected or motivated to look to fasteners for garments. MPEP §2141.01(a). Likewise, an inventor looking to create a

body drier having an easily operable heat output adjustment would not be expected or motivated to look to building heating systems that are designed to minimize energy consumption. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). The prior art is devoid of any suggestion or teaching of the switch/microprocessor in combination with a body drier as defined in claim 27.

Furthermore, the microprocessor of Egan does not sequentially activate a heater in response to actuation of a switch means. The microprocessor operation is preprogrammed with control buttons on a control unit. P.3, lines 15-30. Claim 27, as amended, includes a *depressible switch positioned on said housing*; a microprocessor means in communication with said switch for sequentially activating a select one of said heaters each time said switch is *depressed*. A depressible switch on a housing for sequential activation of heaters is not remotely disclosed or suggested in Egan.

Regarding claim 28 pertaining to the gravity-actuated switch, the examiner again cited the patent to Albanes in view of Marino. The examiner has reverted to an argument previously abandoned by providing the conclusory statement that:

“Marino discloses a portable electrical heater comprising a safety shutoff switch in the form of a switch (31) in the event that the heater unit tips forward. Therefore it would have been obvious to one skilled in the art to install the safety shutoff switch taught by Marino and connect it to Albanes body drying system as such would disabling power in the event the heating unit is overturned, thereby providing safety.”

However, applicant did not claim the safety shutoff switch of Marino. The Abstract in

Marino provides, “[i]ncluded with the switch is a manually operable actuator **projecting from the front wall and movable in a single motion** between a stable first position producing the closed condition and a stable second position producing the open condition, and wherein the actuator is shaped and arranged to be moved into the second position **in response to contact with a substantially planar surface.**” (Emphasis added). Clearly from the disclosure of Marino, in order for the switch to disable the heater, the heater housing must fall forwardly **and** the front face thereof must engage a planar support surface. See column 2, lines 67-68, and column 3, lines 1-12. The purpose of the switch in Marino is not to disable the heater if the housing topples, but to disable it if the housing falls on its front face, which could result in overheating by obstructing the hot air outlet. Column 1, lines 49-50.

Conversely, the present claimed invention includes a **gravity-actuated** switch that disables a hot air blower assembly upon the housing toppling in any direction and regardless of whether the housing engages a planar or other surface. Such a safety feature is critical with an electrical device that will be operated near water. Marino neither discloses such feature nor suggests a motivation for doing so. In addition, such motivation or suggestion would not be expected since Marino relates to a portable heater, which should never be operated in an area where water may accumulate.

Claim 29, which is dependent upon claim 28 and is directed to the housing being mounted on a *weighted* base, was rejected in light of Albanes in view of Aufiero. Aufiero merely discloses a heater mounted on a “base.” It does not refer to a body drier as claimed mounted on a weighted base. More importantly, claim 29 depends from claim 28, which was rejected in light of Albanes in view of Marino. The examiner should have attempted to show how it is obvious to


combine the base of Aufiero, with Albanes, the switch of Marino **and** the microprocessor of Egan to produce the claimed invention. Such attempt was not made. Claim 32 further defined the support stand as including a planar base portion with a pair of spaced arms extending upwardly therefrom, each of said arms terminating at a distal end and an adjustment knob releasably securing the distal end of each of said arms to one of said housing sidewalls allowing said housing to be angularly adjusted. The examiner merely stated that “it would have been obvious to one skilled in art to mount the Albanes (device), as modified, on Aufiero’s base portion for the purposes of allowing the housing to be angularly adjusted and also to provide stability.” Again, the examiner merely cites a reference that contains the claimed element without stating objective reasoning to combine the references that purportedly show the intervening elements.

Claim 30, which depends from claim 29, defines the front wall as being convex so that said vents simultaneously project hot air upwardly, downwardly and straight ahead. The claim was rejected in light of Albanes in view of Shao. Shao discloses a compact heater that is plugged into a wall outlet having a slightly convex front face. The device in no way relates to hot air blowers or body driers according to the present invention. As such, it fails to disclose or suggest pivotal louvers as does the present invention. Combining pivotal louvers with a convex surface is another critical feature of the present invention in that it allows a user to simultaneously direct hot air to virtually all of the body for efficient drying. However, the examiner failed to show or even imply as to how combining such feature with those discussed, supra, to form the present invention was disclosed or suggested by the combination of Albanes and Shao. The examiner merely stated that, because Shao discloses a heater with a convex front face, it would have been

obvious to combine it with Albanes to form a body drier having the gravity actuated switch means, the weighted base and the microprocessor.

Claim 31 directed toward the pivotal louvers was rejected in light of Albanes and Egan. The examiner indicated that Albanes disclosed the housing, a blower and pivotal louvers while Egan disclosed the switch means as discussed, supra. However, claim 31 depends from claim 30, which depends from 29, etc. Accordingly, claim 31 contains pivotal louvers, the convex front wall, the weighted base and the gravity actuated switch. Not only does Egan fail to show the microprocessor switch assembly, it also fails to show the gravity switch as discussed above, a convex front wall or a weighted base. In order for claims 31 and 32 to be obvious, the examiner would have to show the suggestion of combining Albanes, Hutton, Shao, Marino **and** Aufiero, not just any two of the five. The record is silent as to the motivation for combining the numerous references. For the foregoing reasons, applicant respectfully avers that the newly amended claims are allowable in light of the references cited herein.

Respectfully submitted,

  
Kenneth L. Tolar  
Registration No. 39,860  
Telephone No. (504) 780-9891

cc: Gerardo Melendrez(w/encl.)



**CERTIFICATE OF MAILING**

I hereby certify that this amendment/response is being deposited with the U.S. Postal Service as first class mail under 37 C.F.R. 1.8 and is addressed to the Commissioner of Patents and Trademarks, P.O. Box 1450, Alexandria, Virginia 22313 on this 2<sup>nd</sup> day of November, 2006.

Kenneth L. Tolb (Name of person making deposit)

[Signature] (Signature)

11. 2. 2006 (Date)